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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

ROSYBELLE P. JUNI, Plaintiff and Respondent, v. MICHAEL L. MCCREE, Defendant and Appellant.	H021640 (Santa Clara County Super. Ct. No. DV002512)

Michael McCree appeals in propria persona from a order restraining him for three years from harassing, stalking, disturbing, or contacting Rosybelle Juni. (Code Civ. Proc., § 527.6.) Juni has filed no brief in response. For the reasons stated below, we will affirm the judgment.

In re Bryce C. (1995) 12 Cal.4th 226 explained: "if the respondent fails to file a brief, the judgment is not automatically reversed. Rather, the reviewing court 'may accept as true the statement of facts in the appellant's opening brief and, unless the appellant requests oral argument, may submit the case for decision on the record and on the appellant's opening brief.' (Cal. Rules of Court, rule 17(b).) Although some courts have treated the failure to file a respondent's brief as in effect a consent to a reversal, it has been said that the 'better rule . . . is to examine the record on the basis of appellant's brief and to reverse only if prejudicial error is found.' [Citations.]" (*Id.* at pp. 232-233.)

Here we are unable to accept as true the statement of facts in appellant's opening brief. As we explain below, the trial court specifically disbelieved appellant's version of

the facts. "[T]he testimony of a witness which has been rejected by the trier of fact cannot be credited on appeal unless, in view of the whole record, it is clear, positive, and of such a nature that it cannot rationally be disbelieved." (*Beck Development Co. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1204.)

Appellant challenges the sufficiency of the evidence to support the restraining order. At the hearing on the restraining order, respondent presented the following evidence. After respondent broke up with him in November 1999, appellant kept contacting her, calling her at work, calling her at home, and showing up at her workplace. She repeatedly told him to stop contacting her and move on.

On February 20, 2000, he called her and told her that he would appear when she least expected it. That day he also came to her place of employment. Two coworkers and a security guard at respondent's workplace testified and confirmed appellant's forceful and disturbing telephone calls and his confrontational visit on February 20, 2000. He refused to leave when the security guard asked him to. Instead appellant walked up to respondent and said something while shaking his finger. Appellant also sent respondent a letter on March 3, 2000.

At the hearing appellant testified as follows. He broke up with respondent in January 2000. She regularly left him angry and profane voice mail messages. On February 20, 2000, he went to her workplace because she had left several threatening messages, including one saying that a boyfriend of hers knew where he lived and that he was messing with the wrong person. Appellant was frightened and wanted to prevent future threats. He only went to her workplace because she refused to talk to him on the telephone.

After appellant admitted writing the letter, the court stated, "We've got some inconsistencies." Appellant portrayed respondent as someone who had threatened him. He was "so scared" that he called her and went to visit her. The court noted that appellant had brought no witnesses to corroborate his fear of respondent. "And you've got a letter ten days later that not only admits your outrageous conduct on that day, but certainly doesn't reference any type of horrible threatening phone calls for which you

were in fear of your own safety, and quite the contrary that, not only demonstrates that you were not in fear, but also belies the allegation on your part that this relationship was over long ago. You are begging her to -- evidencing your love and on and on like this. [¶] Quite honestly, I don't believe a single word that you say. It's a bunch of self-serving garbage. Your declaration is just absolutely absurd and I find it -- and to continue to listen to these lies, just personally offends me. And I'm just outraged." After so saying, the trial court granted respondent a restraining order.

The fact-finder is entitled to reject a witness's testimony due to internal inconsistencies or the witness's manner in testifying. (*Day v. Rosenthal* (1985) 170 Cal.App.3d 1125, 1157.) *Lenk v. Total-Western, Inc.* (2001) 89 Cal.App.4th 959 summarized the law applicable to appellate review. "A challenge in an appellate court to the sufficiency of the evidence is reviewed under the substantial evidence rule. [Citations.] '"Where findings of fact are challenged on a civil appeal, we are bound by the 'elementary, but often overlooked principle of law, that . . . the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,' to support the findings below. [Citation.] We must therefore view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor in accordance with the standard of review so long adhered to by this court." [Citation.]' [Citations.] [¶] Moreover, we defer to the trier of fact on issues of credibility. [Citation.] '[N]either conflicts in the evidence nor "'testimony which is subject to justifiable suspicion . . . justif[ies] the reversal of a judgment, for it is the exclusive province of the [trier of fact] to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends."' [Citations.] Testimony may be rejected only when it is inherently improbable or incredible, i.e., "'unbelievable *per se*,'" physically impossible or "'wholly unacceptable to reasonable minds.'" [Citations.]'" (*Id.* at p. 968.)

Appellant summarizes respondent's evidence as though she did not testify. We conclude that respondent's testimony alone constitutes substantial evidence that he was harassing her. (Evid. Code, § 411.)

Appellant also complains that the trial judge denied him due process when he "abruptly ended appellant's testimony" and ruled in favor of respondent. Appellant cites no authority requiring the trial judge, as the fact-finder, to listen to whatever appellant wanted to say. "A trial court has a clear duty to supervise the conduct of the trial to the end that it may not be unduly protracted and that other litigants too may have their day in court." (*Sullivan v. Dunningan* (1959) 171 Cal.App.2d 662, 670.) It appears that the trial judge was justified in determining that he had heard enough from appellant to realize that his further testimony would not be helpful.

Appellant's brief also suggests without supporting argument or authority that respondent failed to disclose witnesses. "Appellate courts are not obliged to develop arguments which are merely suggested." (*Tate v. Saratoga Savings & Loan Assn.* (1989) 216 Cal.App.3d 843, 855-856.

The judgment is affirmed.

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BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

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WUNDERLICH, J.

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O'FARRELL, J.*

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* Judge of the Monterey Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.